

Maine Revised Statutes
Title 38: WATERS AND NAVIGATION
Chapter 3: PROTECTION AND IMPROVEMENT OF WATERS

§480-U. CRANBERRY CULTIVATION

1. General permit. An individual permit is not required for the alteration of freshwater wetlands to cultivate cranberries as long as the provisions of this section are met.

[1991, c. 214, §2 (NEW) .]

2. Requirements. An application must be filed with the department and must meet the following requirements.

A. The application must contain written certification by a knowledgeable professional that the cranberry cultivation project will not be located in a wetland that has one or more of the following characteristics:

- (1) Is a coastal wetland or is located within 250 feet of a coastal wetland;
- (2) Is a great pond;
- (3) Contains endangered or threatened plant species as defined in Title 12, section 544;
- (4) Contains any type of palustrine natural community of which there are 20 or fewer occurrences in the State;
- (5) Contains any of the following resources:
 - (a) Habitat for species appearing on the official state or federal lists of endangered or threatened species when there is evidence that the species is present;
 - (b) As defined by rule by the Commissioner of Inland Fisheries and Wildlife, whether or not the resource has been mapped, high-value and moderate-value deer wintering areas; deer travel corridors; high-value and moderate-value waterfowl or wading bird habitats, including nesting and feeding areas; shorebird nesting, feeding or staging areas; or seabird nesting islands; or
 - (c) Critical spawning and nesting areas for Atlantic salmon as defined by rule by the Department of Marine Resources whether or not mapped;
- (6) Is located within 250 feet of the normal high water line and within the same watershed of any lake or pond classified as GPA under section 465-A;
- (7) Is a bog dominated by ericaceous shrubs, sedges and sphagnum moss and usually having a saturated water regime, except that applications proposing reclamation of previously mined peat bogs may be considered;
- (8) Is land adjacent to the main stem of a major river, as classified in section 467, that is inundated with floodwater during a 100-year flood event and that under normal circumstances supports a prevalence of wetland vegetation, typically adapted for life in saturated soils; or
- (9) Contains at least 20,000 square feet of aquatic vegetation, emergent marsh vegetation or open water, except for artificial ponds or impoundments, during most of the growing season in most years; except that cranberry cultivation is allowed more than 250 feet from the edge of the area of aquatic vegetation, emergent marsh vegetation or open water.

A project to cultivate indigenous cranberries may be located in wetlands described in subparagraphs (6) and (7) only if the project location is a natural cranberry bog and provisions of paragraph D are met. For purposes of this paragraph, "natural cranberry bog" means an area with indigenous large cranberries,

Vaccinium macrocarpon Ait., comprising more than 50% of the cover in the herbaceous layer; and "cover in the herbaceous layer" means all herbaceous or woody vegetation less than 10 inches in height. [2009, c. 561, §38 (AMD).]

B. The application must contain a plan that includes the following elements:

- (1) A top view drawing of the entire project including existing and proposed beds, dikes, ditches, roads and reservoirs; cross-sectional drawings of beds, dams, dikes and ditches; length, width and depth of beds, dikes and ditches; delineation of the wetland boundaries and calculated area of wetlands affected; description of existing vegetation; amount and type of fill material to be discharged over the beds and location of borrow area; type and size of water control structures; and placement and description of water sources;
- (2) A soil erosion and sedimentation control plan that is consistent with erosion and sediment control specifications as determined by the Department of Agriculture, Conservation and Forestry and the department;
- (3) A plan for a water recovery system, including either a reservoir or the cranberry beds themselves, that is designed to contain the runoff from the project area during a 10-year, 24-hour storm event;
- (4) A plan to maintain a 75-foot buffer strip from any river or stream draining a watershed of 100 acres or more, except that excavated ditches and water intake and outfall pipes or control structures may be allowed in the 75-foot buffer area;
- (5) Design specifications for water intake and outfall pipes and excavated ditches which must be consistent with specifications as determined by the Department of Agriculture, Conservation and Forestry and the department;
- (6) A plan to maintain minimum base flows for each water supply area. Minimum base flow is the aquatic base flow for that watershed, or a flow that can be shown to protect designated uses and characteristics assigned in section 465; and
- (7) Appurtenant facilities, including, but not limited to storage buildings, parking areas and processing areas, may not be located in the freshwater wetland. This limitation does not apply to pump houses, roadways, service areas and other appurtenant facilities directly related and needed to carry out the water related activities. [1991, c. 214, §2 (NEW); 2011, c. 657, Pt. W, §5 (REV).]

C. The applicant must provide a management plan that includes a pesticide and fertilizer program approved by the Department of Agriculture, Conservation and Forestry. The plan must include the following practices:

- (1) The application of nutrients and soil amendments in terms of timeliness, amounts, materials and method of application;
- (2) The use of current integrated pest management practices for applying pesticides properly and in the minimum amounts necessary to control pests; and
- (3) The management of water in terms of bed drainage, runoff disposal, sprinkler irrigation, control devices to separate natural water from pumping supply for irrigation purposes, back-siphoning prevention devices and flooding. [1991, c. 214, §2 (NEW); 2011, c. 657, Pt. W, §5 (REV).]

D. A person applying for approval on the basis that the project location is a natural cranberry bog as defined in paragraph A must provide a management plan that meets all of the requirements of paragraph C and the requirements of this paragraph.

- (1) The cranberries must be cultivated in accordance with organic production standards established in Title 7, section 551, subsection 2 and section 553, subsection 1, paragraph A.

(2) A person may not introduce nonindigenous cranberry plants to the project site. A person may not remove cranberry plants existing on the project site.

(3) Cultivation practices may not alter natural drainage. Filling is limited to placement each year of up to one inch of sand on bearing cranberry vines. [1991, c. 214, §2 (NEW).]

[2009, c. 561, §38 (AMD); 2011, c. 657, Pt. W, §5 (REV) .]

3. Agriculture certification. The Department of Agriculture, Conservation and Forestry shall review all plans submitted pursuant to subsection 2, paragraphs B, C or D and shall certify compliance of these sections to the department within 20 days of receipt of an application.

[1991, c. 214, §2 (NEW); 2011, c. 657, Pt. W, §5 (REV) .]

4. Review period. Work may not occur until 45 days after the department has accepted an application for processing. This period may be extended pursuant to section 344-B with the consent of the applicant.

[1999, c. 243, §12 (AMD) .]

5. Notification. The department shall notify an applicant in writing within 45 days of acceptance for processing if the department determines that the requirements of this section have not been met. Any such notification must specifically cite the requirements of this section that have not been met. If the department has not notified the applicant under this subsection within the specified time period, a general permit is deemed to have been granted.

[1991, c. 214, §2 (NEW) .]

6. Deferrals. The 45-day time limit for processing a completed application under subsection 5 does not apply when winter conditions prevent the department from evaluating a permit application. Under such circumstances, the department may defer action for a reasonable period. The department shall immediately notify the applicant of a deferral under this subsection.

[1991, c. 214, §2 (NEW) .]

7. Fees. The department shall assess a fee for review of applications filed pursuant to this section. The fee must be equivalent to the amount assessed to activities requiring an individual permit for freshwater wetland alterations.

[1991, c. 214, §2 (NEW) .]

8. Violation. Any action taken by a person receiving a general permit under this section that is not in compliance with the plans submitted under subsection 2, paragraphs B, C or D is a violation of the general permit.

§480-U. Enforcement and penalties

(As enacted by PL 1995, c. 287, §2 was REPEALED BY PL 1995, c. 625, Pt. A, §52 and T. 38, §490-V)

[1991, c. 214, §2 (NEW) .]

SECTION HISTORY

RR 1991, c. 1, §57 (COR). 1991, c. 214, §2 (NEW). 1995, c. 287, §18 (NEW). 1995, c. 406, §14 (AMD). 1995, c. 625, §A52 (RP). 1999, c. 243, §12 (AMD). 1999, c. 401, §BB18 (AMD). 2005, c. 330, §17 (AMD). 2009, c. 561, §38 (AMD). 2011, c. 657, Pt. W, §5 (REV). MRS A T.38, §490V (RP).

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